

Item \_\_\_\_\_

Prepared by: Steve Mulroy

Approved by: \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE SHELBY COUNTY CODE OF ORDINANCES BY ENACTING A NEW PREVAILING WAGE ORDINANCE THAT REQUIRES COMPLIANCE WITH PREVAILING WAGES AND BENEFITS AND PROVIDES FOR A MEANS OF ENFORCEMENT, PENALTIES, AND SANCTIONS FOR VIOLATIONS. SPONSORED BY COMMISSIONER STEVE MULROY.**

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**WHEREAS**, it is the purpose of Shelby County Government to promote the economical and beneficial development of Shelby County; and

**WHEREAS**, it is in the interest of Shelby County to award contracts for the construction, alteration, and/or repair of public buildings or public works to responsible bidders; and

**WHEREAS**, the Shelby County Board of Commissioners has determined that responsible bidders are those who, among other things, pay responsible wages and benefits to their employees performing work on such contracts.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE THAT**, the Shelby County Code of Ordinances be and the same is hereby amended by adding the following prevailing wage ordinance as a new section in Chapter 2, Article II, Division 2 entitled "Department of Purchasing; Sales; Contracts:"

**(a) Prevailing Wage Required.** Any firm, individual, partnership, or corporation that is awarded a contract by the Shelby County government for the construction of, improvement, enlargement, alteration or replacement of a public work or project in excess of \$500,000 and any subcontractors of such public work or project in excess of \$100,000 ("Recipient") shall be required to pay local prevailing wages and benefits for laborers, mechanics or other listed classifications as defined by the Tennessee Department of Labor.

**(b) Avoidance Prohibited.** Contracts for construction of, demolition, improvement, enlargement, alteration or replacement of a public work or project shall not be deliberately divided into multiple projects or assigned to another contracting entity for the purpose of circumventing the prevailing wage ordinance. No provisions of this ordinance shall be construed to be in conflict with the LOSB or Living Wage Ordinance, or in the event of such conflict, the provisions of the LOSB or Living Wage Ordinance shall have control.

**(c) Prevailing Wage Commission.** There shall be a Prevailing Wage Commission which shall ensure that the Prevailing Wage Ordinance is properly interpreted and enforced and which shall have general oversight responsibility for the Ordinance. The Prevailing Wage Commission shall be composed of 6 members: one representative of the Administration, one representative of the County Commission, one representative from the Memphis and West Tennessee Building and Construction Trades Council, one representative of the Associated Builders and Contractors, one representative of a local minority contractor association, and the Title VI Compliance Monitor for Shelby County Government. These members shall be appointed by the Mayor and confirmed by a majority of the County Commission. If a representative of one of the designated bodies or associations is unavailable after reasonable effort, a substitute member of the Prevailing Wage Commission may be appointed by the Mayor subject to confirmation by a majority of the County Commission. Members shall serve two (2) year terms to be staggered, except that initial members' terms may be adjusted to provide for the staggering of terms. The Prevailing Wage Commission shall meet a minimum of once a year. . It shall have no authority in the establishment of wages, benefits, or job descriptions except as expressly provided in this

Ordinance. It may administratively adjudicate or otherwise resolve disputes regarding compliance with the Ordinance or interpretation of its provisions. The Prevailing Wage Commission may establish rules and procedures for its operations.

**(d) Determination of Prevailing Wages and Benefits.** For the purposes of this Ordinance, the prevailing wage and benefit rates shall be set as follows. The prevailing wage rate shall be the most current State of Tennessee prevailing wage established by the Tennessee Department of Labor for Region 1 (Shelby County). The benefit rates shall be the most current rates described in the published schedule by the Memphis and West Tennessee Building and Construction Trades Council, except as otherwise provided in this Ordinance. The applicable rate shall be determined at the time that the project is awarded.

**(e) Equivalent Benefits.** If a contractor or subcontractor provides health, pension, or other benefits which are equivalent to those paid under Section d, but at less cost, it may be eligible to pay benefits at an hourly rate lower than set out in Section d for that category of worker. Such a determination may be made by the Prevailing Wage Commission upon receipt of formal written request from the contractor or subcontractor.

**(f) Filing Scheduled Wages and Benefits.** Any contractor or subcontractor performing under the terms of this Ordinance, prior to receiving an award, shall file with the County a schedule of the wages and benefits to be paid to such laborers, workmen or employees, using the categories then in use by the Tennessee Department of Labor. The schedule must list wages and benefits which equal or exceed the prescribed minimum levels provided for in this Ordinance for each category or laborer. Such schedule shall be included in all bid documents and clearly posted on the jobsite during construction. It shall be signed by the contractor or subcontractor's representative who is properly authorized to attest by signed statement that the contractor is in full compliance with the Ordinance to the best of the signer's knowledge and belief. .

**(g) Apprentices.** For any work project covered by this Ordinance, any apprentice used must be properly indentured into a joint labor management apprenticeship training program or an equivalent program that is registered and certified with the U.S. Department of Labor, Bureau of Apprenticeship Training.

**(h) Compliance Monitoring.** The Prevailing Wage Commission may establish rules, regulations, and procedures for monitoring and ensuring compliance with the provisions of this Ordinance which shall be subject to the approval of the Shelby County Board of Commissioners. The Administration may also appoint, subject to Commission approval, a Prevailing Wage Representative to coordinate compliance monitoring. Such compliance monitoring will include the following as required: review of documents submitted, interviews with contractor representatives, site inspections of the county contracted work sites, confidential interview of employees with construction related work assignments for the project. However, any findings and conclusions determined as a result of the interview will be subject to government required disclosure. The Prevailing Wage Representative will work informally with the recipient to reach an agreement for compliance. The award recipient will have an opportunity to provide additional information to the representative that will explain inconsistencies and/or resolve the discrepancies. If an agreement cannot be met, the Prevailing Wage Representative will complete a written report of non-compliance and submit it to the award recipient. The award recipient will be permitted thirty (30) calendar days from the date the report is received to correct the non-compliance violation. If after thirty (30) calendar days the award recipient does not respond to the written report, the matter will be brought before the prevailing Wage Commission for further review in a manner consistent with its established rules of procedure. The County and/or its authorized representative shall have the power to request and receive information from contractors which would substantiate compliance with this Ordinance.

**(i) Violations, Penalties and Sanctions.** An award recipient who knowingly or willfully fails to comply with the provision of the Prevailing Wage Ordinance as determined by a court of competent jurisdiction shall be fined in the manner prescribed by T.C.A § 5-1-211. The award recipient who is found to have knowingly or willingly committed two (2) violations of this Ordinance in any twenty-four month period shall be prohibited from being awarded a contract by Shelby County for a period of twenty-four (24) months from adjudication of the second violation.

**(j) Restitution for Underpayment of Wages-**Where a documented underpayment of wages has occurred, the employer will be required to pay wage restitution to the affected employee. Wage restitution must be paid promptly in the full amount due, less the permissible and authorized deductions. No vendor covered under the provisions of this ordinance shall retaliate against an employee who reports a potential violation. Such action is subject to appropriate sanctions as determined by the Prevailing Wage Commission. In the event that any contractor/service provider fails to pay its affected employees restitution, the provisions of this article do not create a private right of action against Shelby County Government for such contractor/service provider's violation of the provisions herein.

**(k) Severability.** The provisions of this Ordinance are severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held unconstitutional or void for any reason, the remainder of this Ordinance shall continue in full force and effect.

**(i) Effective date.** This ordinance shall take effect as of July 1, 2009, and will apply to all contracts for which the RFP was issued on or after that date.

**BE IT FURTHER ORDAINED,** That this ordinance shall take effect pursuant to the Shelby County Charter and become effective as provided by law.

\_\_\_\_\_  
Chairman of County Commission

\_\_\_\_\_  
A C Wharton, Jr.  
Shelby County Mayor

Date:\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

ADOPTED THIRD READING: \_\_\_\_\_